

Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

***** CIVIL ACTION

UNILOC, USA, INC., * 03-440-S

ET AL *

*

VS. * APRIL 2, 2009

* VOLUME 9

MICROSOFT CORP., *

ET AL * PROVIDENCE, RI

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH
DISTRICT JUDGE
(JURY TRIAL)

APPEARANCES:

FOR THE PLAINTIFF: PAUL J. HAYES, ESQ,

and DEAN BOSTOCK, ESQ.

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1 Q. So I would take it that you have read the
2 document, I think you said, in the normal course of
3 business?

4 A. Yes.

5 Q. While you were program manager?

6 A. Yes.

7 Q. All right. And in your deposition, or when you
8 were questioned, on page 25, it's under the heading
9 "Security," correct?

10 A. You're asking me?

11 Q. Yeah. The paragraph that you explained to my
12 brother is under the heading "Security"?

13 A. Yes.

14 Q. And it says: Product keys are valuable for two
15 reasons. First, since Product Keys can be used to
16 install a product and create a valid Product ID, you
17 can associate a monetary value to them. An appraisal
18 process found that a Product Key is worth anywhere
19 between 10 and \$10,000 depending on usage.

20 Do you see that?

21 A. Yes, I do.

22 Q. And you will agree with me that that paragraph is
23 accurate, but you think, possibly, the \$10,000 number
24 could be high, correct?

25 A. That's what I said in my deposition, yes.

1 Q. And you will agree with me here at trial that what
2 you said, as you say in your deposition, was true?

3 A. Yes.

4 Q. Okay.

5 A. But I was in no way talking about Product
6 Activation.

7 Q. Of course not. Now, let's turn because you said
8 you have -- you understood, though, when that question
9 was asked, that the paragraph that's being described
10 here is under the, again, heading "Security."

11 A. It is under "Security," yes.

12 Q. And you know the function of Product Activation is
13 to reduce casual copying, fair?

14 A. I actually know -- have only a very high level of
15 knowledge about Product Activation. And it is my
16 understanding that, yes, that was the purpose.

17 Q. Right. And you certainly knew that that was the
18 purpose as of the time of the introduction of Product
19 Activation, correct?

20 A. Yes.

21 Q. Okay. Now, turn, if you will, to page 5, because
22 I think you said this document had nothing to do with
23 Product Activation. Was I correct in what you said?

24 A. What I said is that PID 3.0 supported non-Product
25 Activation products also. Well, that it supported both

1 types. Is that --

2 Q. Oh, okay.

3 A. That's more what I said. I did not limit my

4 statement to just Product Activation.

5 Q. Right. Well, let's just look at this thing here.

6 It says: Machine identification. The digital ID, the

7 PID, that PID 3.0 generates contains a Hardware ID.

8 The Hardware ID uniquely identifies the machine on

9 which the software is installed, and Microsoft can use

10 this ID to identify instances in which the same copy of

11 the software is installed on multiple machines. Do you

12 see that?

13 A. I do.

14 Q. And that's referring to the use of a Product ID

15 and a Hardware ID, correct?

16 A. It is referring to the Hardware ID in the digital

17 PID.

18 Q. Right. And finally, if you would turn to page 8

19 of that document.

20 On page 8, it says: Finally, the anti-piracy

21 group may use PID 3.0 to initiate special programs that

22 combat piracy. As explained in the product group's

23 section of this paper, the license verification

24 program, LVP, is the latest anti-piracy initiative that

25 Microsoft is using to combat piracy. This program

1 relies heavily on the features of PID 3.0.

2 Did I read that accurately?

3 A. You read it accurately.

4 Q. And the license verification program, LVP, that is

5 what Microsoft referred to as one of the pilots to

6 Product Activation, isn't that a fact?

7 A. It was the precursor.

8 Q. So the answer to the question is yes?

9 A. I'm not sure which question I'm answering. Which

10 question?

11 Q. I show you what has been marked in this case --

12 MR. HAYES: This is in, Judge, so I'll publish

13 it with your permission.

14 Q. This is an e-mail from Susan Cole.

15 THE COURT: What number is it?

16 MR. HAYES: PX-90.

17 Q. Do you see that?

18 A. I do see that.

19 Q. It might pop up on your little monitor right in

20 front of you.

21 A. It is on my little monitor.

22 Q. Okay. And it's an e-mail from Cole, Susan Cole,

23 correct?

24 A. It is an e-mail.

25 Q. And it says: We are rolling out Product

1 Activation, a/k/a forced registration, Office
2 Registration Wizard, license verification program, et
3 cetera. And the license verification program was
4 referred to at Microsoft as LVP, true?

5 A. Yes.

6 Q. And in your document, which you indicated you
7 read, it's referring specifically on page 8 to the
8 license verification program, correct?

9 A. Correct.

10 Q. Which Ms. Cole indicates is Product Activation,
11 a/k/a was formerly known as LVP, true?

12 A. True.

13 Q. Okay. Now, you also gave some testimony here
14 about -- one portion of your testimony was you were
15 directed to the date of the document. And let's take
16 the earliest date of this document at '99. Do you see
17 where it says June of '99?

18 A. Yes.

19 Q. Okay. And you appreciate that, as of June of '99,
20 the Brazilian Publisher, which is the precursor to
21 Product Activation, and this LVP, the precursor to
22 Product Activation, were in existence?

23 A. I do not know that.

24 Q. You don't know that?

25 A. I actually don't know that. And I need to say I

1 am not cc'd on this e-mail, so I did not know about
2 this announcement.

3 Q. Right. And were you here for Mr. Adrian Hughes'
4 testimony when I asked him, I think, when he testified
5 that the Brazilian program was launched in Brazil in
6 May, I believe, 4th, 1998 and provided in the specific
7 document. Were you there for this?

8 A. I was not, and I do not know that.

9 Q. Okay. Now, you also attempted to characterize
10 what you say was your understanding of this paragraph.
11 The paragraph on its face under "Security" says: The
12 Product Key can be used to install a product and create
13 a valid Product ID. Do you see that?

14 A. I do see that.

15 Q. Okay. And you told us, you said now you think
16 that's talking about the 10 and 10,000, the various
17 values of products, right?

18 A. Could you say that again.

19 Q. You said that the 10 and 10,000 is talking about
20 the value of products?

21 A. Product license.

22 Q. Well, ma'am, let's go back to the front of the
23 paper. First of all, you did not write this paragraph,
24 correct?

25 A. I did not write this paragraph.

1 Q. Right. And it says: An appraisal process found
2 that a Product Key is worth anywhere between 10 and
3 10,000 depending on usage, right? You did not do the
4 appraisal process?

5 A. I did not.

6 Q. You have not seen the appraisal process?

7 A. No, I have not.

8 Q. Where is it?

9 A. I do not know.

10 Q. Is it lost, burnt, destroyed? Where is it?

11 MR. SCHERKENBACH: Objection, your Honor.

12 That's argumentative.

13 Q. Where is it?

14 THE COURT: She stated she doesn't know where it
15 is, so I'm not sure how she can answer that question.

16 Q. You certainly haven't seen it in this courtroom?

17 A. No. I have not seen it, period.

18 Q. Right. Now, ma'am, who was the person who was the
19 product manager before you?

20 A. Do you mean program manager?

21 Q. I'm sorry. Program manager. I misspoke.

22 A. Yes. Her name was Manisha Chainani.

23 Q. And let me show you what I would like to mark as
24 the next exhibit which is --

25 THE CLERK: 1114.

1 Hardware ID in Product Activation, he said that's is
2 quasi-unique. And we think there's sufficient evidence
3 that the patent should be invalidated on that basis as
4 well.

5 THE COURT: Okay. Thank you.

6 MR. SCHERKENBACH: On non-infringement, your
7 Honor, Microsoft moves for judgment as a matter of law
8 on five bases. Two of them were the subject of our
9 filing on March 31st, and I will not repeat them. I'll
10 just identify them. The first is Microsoft does not
11 have a registration system as claimed, among others
12 reasons because users are licensed to use our products
13 before the Product Activation process ever happens;
14 second, and for similar reasons, we don't meet the use
15 mode requirement as a matter of law in contract
16 interpretation. Again, the user is licensed before the
17 Product Activation process ever happens. Full use in
18 accordance with the license happens during the grace
19 period and, therefore, there was no infringement.
20 Those were the two that were raised, specifically, in
21 our March 31st filing. The third is we don't have a
22 licensee unique ID.

23 I think, actually, it's undisputed the system
24 accused here, the Product Activation system never
25 creates an association with a user of any information

1 at all. The only evidence that Uniloc has put in on
2 this is that in their expert asserting that the user
3 creates an association when he types in the Product
4 Key. Whether that's even true or not is beside the
5 point because it's not the system creating the
6 association. So for at least for that reason, we don't
7 have a licensee unique ID.

8 Number four, Product Activation does not have a
9 summation algorithm or the equivalent. The MD5 and
10 SHA-1 algorithms are not summers. They are not
11 summation algorithms. They are not equivalent to
12 summers or summation algorithms.

13 Number five relates to the doctrine of
14 equivalents. I believe the Court will find, if it
15 looks at the record, that Mr. Klausner's testimony on
16 this is purely conclusory. The Federal Circuit has
17 laid out pretty clearly what you have to do to make out
18 a case on the doctrine of equivalents, and they haven't
19 done it. They have not offered substantive analysis,
20 and they have not provided any linking evidence to
21 actually explain their theory.

22 One other point on infringement relates to
23 indirect infringement, your Honor. I know this is an
24 issue we're going to discuss this afternoon, but we
25 don't believe there's any evidence at all on the issues

1 of contributory infringement or inducing infringement.
2 They have made those allegations. I don't think
3 they've actually even tried those issues so we should
4 be entitled to Rule 50 on those two indirect
5 infringement theories.

6 Moving on to willfulness, I want to renew the
7 motion we made March 27, 2009, that there can be no
8 willful infringement in this case for a number of
9 reasons, which are stated in that motion and I will not
10 repeat them.

11 Finally, damages. This is a case where judgment
12 as a matter of law is appropriate on damages for a
13 couple of reasons. Number one, the basis for
14 Mr. Gemini's theory is this \$10 value taken from, I
15 believe, it's Exhibit 261, the Product Support Services
16 memorandum. As we know now from Ms. Richards, there is
17 no basis whatsoever for Mr. Gemini's reading of that
18 document. And they relied only, ironically, on
19 Ms. Richards deposition testimony when she was not
20 asked about what that paragraph meant. We brought her
21 here, asked her, and it's very clear it doesn't mean
22 what Mr. Gemini said. It's a cornerstone of the
23 analysis. That's the end of the story.

24 Apart from that, he then applies the 25% rule,
25 which, whatever the Court thinks of that in the